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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,904	12/02/2003	Kei Roger Aoki	16952CON1CIP3 (BOT)	4172

7590 09/11/2007

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 09/11/2007

Please find below and/or attached an Office communication concerning this application or proceeding.



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20070904

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## Commissioner for Patents

The reply filed on 4-12-07 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s):

The claimed subject matter on Sep. 29, 2006 and prior to the final rejection corresponded to a method for treating strabismus. Applicant submitted a request for RCE on April 12, 2007 and amended the claims to read "a method for treating spastic muscle . . ." In amending the claimed invention, Applicants effectively changed invention from treatment of strabismus to treatment of pain with muscle activity and contracture. Strabismus, more commonly known as **cross-eyed** or **wall-eyed**, is a vision condition in which a person can not align both eyes simultaneously under normal conditions. Spastic muscle is one in which a muscle resists being stretched out, and the resistance to stretch is greater the faster the muscle is moved.. A method for treating strabismus is patentably distinct from a method of treating spastic muscle because both methods involve different patient populations and different end points. A method of treating strabismus involves treatment of the ocular muscles whereas the claims as amended after filing of RCE involve treatment of muscles that is resistant to being stretched.

The MPEP states "Applicants cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right (i.e., applicant cannot switch inventions). See 37 CFR 1.145. If an RCE is filed with an amendment canceling all claims drawn to the elected invention and presenting only claims drawn to a nonelected invention, the RCE should be treated as a proper RCE but the amendment should not be entered. The amendment is not fully responsive and applicant should be given a time period of one month or thirty days (whichever is longer) to submit a complete reply.. See 37 CFR 1.111." See MPEP 706.07(h).

Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anish Gupta whose telephone number is (571)272-0965. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can normally be reached on (571) 272-0562. The fax phone number of this group is (571)-273-8300.

Anish Gupta  
Patent Examiner